

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

U.S. ETHERNET INNOVATIONS, LLC,

Plaintiff,

v.

**ACER, INC.; ACER AMERICA
CORPORATION; APPLE, INC.; ASUS
COMPUTER INTERNATIONAL; ASUSTeK
COMPUTER INC.; DELL INC.; FUJITSU
LTD.; FUJITSU AMERICA, INC.; GATEWAY
INC.; HEWLETT PACKARD CO.; HP
DEVELOPMENT COMPANY LLC; SONY
CORPORATION; SONY CORPORATION OF
AMERICA; SONY ELECTRONICS INC.;
TOSHIBA CORPORATION; TOSHIBA
AMERICA, INC.; and TOSHIBA AMERICA
INFORMATION SYSTEMS, INC.**

Defendants.

NO. 6:09-CV-448-LED

NVIDIA CORPORATION'S SUPPLEMENT TO MOTION TO INTERVENE

On March 17, 2010, NVIDIA Corporation ("NVIDIA") filed a Motion to Intervene [Dkt.157] in this action, seeking to intervene because Plaintiff U.S. Ethernet Innovations, LLC. ("USEI") has accused several of NVIDIA's customers, including Apple, Inc., Fujitsu, Ltd. and Fujitsu America, Inc., of infringement apparently based on networking technology provided by NVIDIA. USEI has not yet responded to the motion.

Shortly after NVIDIA filed its motion, it received a request from Defendant Hewlett-Packard Company ("HP") seeking indemnification for any infringement of the asserted patents-in-suit caused by NVIDIA products. Declaration of T. Rao Coca ¶ 2, attached hereto as **Exhibit A**. Defendant ASUSTek Computer, Inc. ("ASUSTek") also informed NVIDIA, after the instant

motion was drafted, that ASUSTek has been sued by USEI for patent infringement based upon its purchase of NVIDIA products. *Id.* ¶3. HP and ASUSTek both provided NVIDIA with excerpts of USEI's Patent L.R. 3-1 Infringement Contentions. Attached hereto as **Exhibit B** are true and correct copies of the excerpts, with NVIDIA products highlighted in yellow for the court's convenience. Notably, in these excerpts, USEI specifically identifies a number of NVIDIA Ethernet Controllers¹ as accused instrumentalities.

USEI's Infringement Contentions strengthen NVIDIA's right to intervene pursuant to FRCP 24(a)(2), particularly under factors two and three of the analysis.² Specifically, under factor two, it is clear that NVIDIA has a direct and substantial interest in this action because NVIDIA develops, licenses and provides the products that are accused in this case. NVIDIA has an interest in defending its own technology and in clarifying the intellectual property rights that apply to such technology. Under factor three, NVIDIA's ability to protect and defend its products will be severely compromised if it is prevented from participating as a party in this action. Therefore, NVIDIA respectfully requests that the Court grant its Motion to Intervene.

¹ For example, for Claim 1 of U.S. Patent No. 5,732,094, USEI accuses NVIDIA Ethernet Controllers, including without limitation NVIDIA's MCP04 Ethernet Controller, CK804 Ethernet Controller, nForce2 Ethernet Controller, MCP2A Ethernet Controller, nForce3 Ethernet, CK8S Ethernet Controller, nForce Ethernet Controller, MCP51 Ethernet Controller, MCP55 Ethernet Controller, MCP61 Ethernet Controller, MCP65 Ethernet Controller, MCP67 Ethernet Controller, MCP78S Ethernet Controller, MCP77 Ethernet Controller, MCP73 Ethernet Controller, and/or MCP79 Ethernet Controller, and certain compatible devices and variants thereof.

² Under Rule 24(a)(2), a movant must be permitted to intervene whenever four conditions are met: (1) the motion to intervene is timely; (2) the movant has an interest in the property or transaction that is the subject matter of the action; (3) the disposition of the action may as a practical matter impair or impede the movant's ability to protect the movant's interests; and (4) the existing parties do not adequately represent the movant's interests. *See FED. R. CIV. P. 24(a)(2).*

Dated: March 25, 2010

Respectfully submitted,

BRACEWELL & GIULIANI LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically on March 25, 2010 in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/ Michael Chibib
Michael Chibib

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Exhibit A

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NO. 6:09-CV-448-LED

Defendants.

DECLARATION OF T. RAO COCA

1. I am Senior Director, Portfolio Development & Licensing, of NVIDIA Corporation (“NVIDIA”). I submit this declaration in support of NVIDIA’s Supplement to Motion to Intervene in this case. I have personal knowledge of the facts stated below and, if called upon to do so, would testify competently thereto.

2. On March 18, 2010, Hewlett-Packard Company contacted NVIDIA, seeking indemnification for any infringement of the asserted patents-in-suit caused by NVIDIA’s products.

3. On March 16, 2010, ASUSTek Computer, Inc. ("ASUSTek") informed NVIDIA that it has been sued by U.S. Ethernet Innovations, LLC for patent infringement based upon ASUSTek's purchase of NVIDIA products.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: March 25, 2010

/s/ T. Rao Coca
T. Rao Coca

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Exhibit B

USEI CLAIM CHART 23
PATENT LOCAL RULE 3.1 CLAIM CHART FOR U.S.P.N. 5,732,094

Claim 1	Accused Instrumentalities
A method for transmitting a frame of data from a host system through a network interface device to a network, comprising:	<p>The Accused Instrumentalities perform every step of claim 1 literally and under the doctrine of equivalents. Specifically, the Accused Instrumentalities include a NVidia Ethernet Controller, including without limitation the MCP04 Ethernet Controller, CK804 Ethernet Controller, nForce2 Ethernet Controller, MCP2A Ethernet Controller, nForce3 Ethernet, CK8S Ethernet Controller, nForce Ethernet Controller, MCP51 Ethernet Controller, MCP55 Ethernet Controller, MCP61 Ethernet Controller, MCP65 Ethernet Controller, MCP67 Ethernet Controller, MCP78S Ethernet Controller, MCP77 Ethernet Controller, MCP73 Ethernet Controller, and/or MCP79 Ethernet Controller, and compatible devices and variants thereof (hereinafter “NVidia Lan Controller”), that is used to transmit a frame of data from a host system as recited in claim 1, such as when transmitting an Ethernet frame on an LAN.</p> <p>The Accused Instrumentalities can utilize the <i>forcedeth</i> driver, version .64 (“NVidia Driver”).</p> <pre style="font-family: monospace;"> /* * forcedeth: Ethernet driver for NVIDIA nForce media access controllers. * * Note: This driver is a cleanroom reimplementation based on reverse * engineered documentation written by Carl-Daniel Hailfinger * and Andrew de Quincey. * * NVIDIA, nForce and other NVIDIA marks are trademarks or registered * trademarks of NVIDIA Corporation in the United States and other * countries. * * Copyright (C) 2003,4,5 Manfred Spraul * Copyright (C) 2004 Andrew de Quincey (wol support) * Copyright (C) 2004 Carl-Daniel Hailfinger (invalid MAC handling, insane * IRQ rate fixes, bigendian fixes, cleanups, verification) * Copyright (c) 2004,2005,2006,2007,2008,2009 NVIDIA Corporation </pre>
executing a frame transfer task initiated in the host system to transfer a frame to a	A frame transfer task is initiated in the host system, such as a network frame transmit, to transfer a frame (Ethernet frame) to a buffer memory (transmit FIFO) in the network

USEI CLAIM CHART 23

buffer memory in the network interface device; and	<p>interface device (NVidia Lan Controller).</p> <p>As shown in the NVidia Driver, the Accused Instrumentalities use a transmit FIFO.</p> <p>u64 tx_fifo_errors;</p>
executing a frame transmission task in the network interface device to initiate transmission of the frame from the buffer memory to the network in parallel with the frame transfer task before the frame is completely transferred to the buffer memory.	<p>A frame transmission task is executed in the Accused Instrumentalities to initiate transmission of the frame (Ethernet frame) from the buffer memory (transmit FIFO) to the network in parallel with the frame transfer task before the frame is completely transferred to the buffer memory (frame transmission begins when NvRegTxWatermark bytes are in the transmit FIFO).</p> <p>The NVidia Driver includes a transmit watermark value, or threshold:</p> <p>NvRegTxWatermark = 0x13c,</p>
Claim 2	The method of claim 1, wherein the frame transmission task includes executing a carrier sense, multiple access protocol.
Claim 3	The method of claim 1, wherein the frame transmission task includes executing a carrier sense, multiple access with collision detection protocol.